

NOTE: CHANGES MADE BY THE COURT

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IMELDA ORTIZ

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IMELDA ORTIZ, an individual,

Plaintiff,

vs.

RAYTHEON COMPANY, Space and
Airborne Systems, a business, form
unknown; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 2:16-cv-00900-ODW-PLA

Hon. Otis D. Wright, II
Magistrate Judge: Hon. Paul L.
Abrams

DISCOVERY MATTER

**STIPULATED PROTECTIVE
ORDER**

Action Filed: December 3, 2015
Trial Date: March 28, 2017

1 The parties to this Action, through their counsel of record, have stipulated
2 and agreed that an order under Federal Rule of Civil Procedure 26(c) is necessary
3 and useful to protect the confidentiality of documents and other information
4 obtained in the course of discovery in this Action, and have stipulated and agreed to
5 be bound by the terms of this Stipulated Protective Order (“Protective Order”).

6 Discovery in this Action is likely to involve production of confidential,
7 proprietary, or private information for which special protection from public
8 disclosure and from use for any purpose other than prosecuting this litigation may
9 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
10 enter the following Protective Order.

11 **DEFINITIONS**

12 1. The term “Protected Material” shall mean information or documents
13 designated as “Confidential Information” and/or “EXPORT-CONTROL-
14 RESTRICTED” information.

15 2. The term “Producing Party” means the party or non-party producing or
16 disclosing documents or information that are designated as Protected Material
17 under this Protective Order.

18 3. The term “Receiving Party” shall mean the party or parties to whom
19 Protected Material is produced or otherwise disclosed.

20 **SCOPE**

21 4. This Protective Order shall be applicable to and govern all Protected
22 Material produced, furnished, or created during the course of this Action, including
23 any materials or information sought from a non-party who receives a subpoena in
24 connection with this Action or otherwise produces materials or information in this
25 Action. The Protected Material subject to this Protective Order includes, but is not
26 limited to, materials and information produced in response to requests for
27 production of documents; answers to interrogatories; answers to requests for
28 admission; responses to requests for production of documents; deposition

testimony, exhibits, transcripts, and videotapes; all other discovery, pleadings, briefs, memoranda, affidavits, transcripts; and other materials furnished by or on behalf of any party to this Action. Any summary, analysis, description, compilation, notes, excerpt, copy, electronic image or database containing Protected Material shall be subject to the terms of this Protective Order to the same extent as the material or information from which such summary, analysis, description, compilation, notes, excerpt, copy, electronic image, or database is made or derived.

5. This Protective Order applies to all Protected Material produced in this Action, regardless of whether such document or information was produced prior to or after entry of this Order.

6. In the event that non-parties produce Protected Material in connection with this Action, the production may be made subject to the provisions of this Protective Order, including because a Party may designate material produced by non-parties as Protected Material. As necessary and appropriate to uphold the terms of this Protective Order, the existence of this Protective Order may be disclosed to any person (including any non-party served with a subpoena in this Action) producing Protected Material in this Action.

7. Nothing in this Protective Order is intended to conflict with the applicable Local Rules. Insofar as anything in this Order could be interpreted as conflicting with the applicable Local Rules, the Local Rules will govern. Any use of Protected Material during a court hearing or at trial shall be governed by the orders of the presiding judge.

DESIGNATION

8. Confidential Information. Any party or non-party may designate information, documents, or deposition testimony produced in this Action as “Confidential Information” if such party has the reasonable and good faith belief that such information is non-public and constitutes her, his, or its trade secret, other confidential information within the meaning of Rule 26(c)(1)(G) of the Federal

1 Rules of Civil Procedure, or is otherwise protected from public disclosure as
 2 contemplated by this Protective Order. This includes but is not limited to
 3 confidential research and development information; customer and supplier
 4 information; company personnel information; marketing strategies and information;
 5 strategic business information (including but not limited to business plans,
 6 forecasts, cost information, or logistical information); financial information;
 7 employee information; personal medical information; private personal information;
 8 health information; and tax returns.

9 9. Any information supplied in documentary or other tangible form may
 10 be designated by the Producing Party as Confidential Information by marking or
 11 stamping on each page of such document, transcript, or exhibit, or on the face of
 12 such thing, the legend “CONFIDENTIAL” or “CONFIDENTIAL
 13 INFORMATION.” Where such marking of material is impossible or impractical
 14 (such as groups of documents in native form), the Producing Party shall designate
 15 in writing, at the time of its production, that the material contains Confidential
 16 Information. Information produced by a non-party but subsequently designated as
 17 confidential by a party to the Action shall be treated as Confidential Information,
 18 and the recipients shall either mark their copies as “CONFIDENTIAL” or
 19 “CONFIDENTIAL INFORMATION” or request that the Producing Party provide a
 20 replacement set so marked.

21 10. Export-Control-Restricted Information. “EXPORT-CONTROL-
 22 RESTRICTED” documents, information, material, and deposition testimony may
 23 not be exported, reexported, temporarily imported, transferred, or retransferred to
 24 any non-U.S. person (which shall include a U.S. person with dual citizenship),
 25 country, or entity, by any means, without the appropriate approval of the U.S.
 26 Department of State, Directorate of Defense Trade Controls (“DDTC”) for
 27 International Traffic in Arms Regulations (“ITAR”) Restricted materials, and the
 28 U.S. Department of Commerce, Bureau of Industry and Security (“BIS”) for Export

1 Administration Regulations (“EAR”) Restricted materials. These restrictions also
2 apply to United States citizens and permanent residents employed by a company or
3 organization that falls within the definition of “foreign person.” *See* ITAR, 22
4 C.F.R. § 120.16. United States persons employed by such a foreign organization or
5 company are not eligible to receive ITAR- controlled information absent an
6 authorization from the DDTC or EAR-controlled information absent an
7 authorization from the BIS.

8 11. In any instance where information designated as EXPORT-
9 CONTROL- RESTRICTED is accessed, the person with such access shall not
10 transfer, carry, or send such information to a location outside the United States,
11 including via any electronic device or means, nor otherwise share such information
12 with any person not explicitly authorized to receive such information as set forth
13 above.

14 12. EXPORT-CONTROL-RESTRICTED documents and material related
15 to this case containing technical data under the ITAR or EAR must be protected
16 from export or transfer to unauthorized foreign persons, whether located inside or
17 outside of the United States, including any foreign persons (as defined under these
18 export control regimes) or U.S. persons with dual citizenship, that may be
19 employed by law firms, consultants, or any other third party involved in this
20 dispute. Additionally, the furnishing of technical assistance (including the
21 disclosure or release of export-controlled technical data) may constitute a “defense
22 service,” which also requires approval. Any disclosure of produced export-
23 controlled technical data, or furnishing of technical assistance where an
24 authorization is needed but not secured, constitutes an export violation, which
25 should be disclosed to the U.S. Department of State.

26 13. Counsel will take all necessary steps to ensure that any EXPORT-
27 CONTROL- RESTRICTED documents and information will only be provided to,
28 or accessible by, U.S. persons (or U.S. persons without dual citizenship) serving as

1 expert or fact witnesses, or acting on behalf of Counsel as employees, contractors,
2 vendors, or other service providers on a need to know basis. Additionally, Counsel
3 will take all necessary steps to ensure access to these documents will be restricted
4 to U.S. persons (as defined by ITAR § 120.15), that these documents will not be
5 exported to foreign persons or foreign countries, and that no technical assistance
6 directly related to controlled defense articles or other commodities will be provided
7 to foreign persons or foreign countries. Counsel will securely maintain EXPORT-
8 CONTROL-RESTRICTED documents in a password-protected online repository
9 accessible only to U.S. Persons, minimize printing and hard copy storage of
10 EXPORT-CONTROL-RESTRICTED documents, and maintain any print copies in
11 marked folders that are, when unattended, stored in locked cabinets and/or offices
12 to which only U.S. persons have access.

13 14. Any party or non-party may designate information, documents, or
14 deposition testimony produced in this Action as “EXPORT-CONTROL-
15 RESTRICTED” if such party has the reasonable and good faith belief that such
16 information, documents, or testimony may contain ITAR or EAR restricted
17 materials. Any information supplied in documentary or other tangible form may be
18 designated EXPORT-CONTROL- RESTRICTED by the Producing Party by
19 marking or stamping on each page of such document, transcript, or exhibit, or on
20 the face of such thing, the legend “EXPORT- CONTROL-RESTRICTED.” So long
21 as it is consistent with applicable regulations, where such marking of material is
22 impossible or impractical, the Producing Party shall designate in writing, at the time
23 of its production, that the material contains EXPORT- CONTROL-RESTRICTED.
24 Information produced by any party or non-party but subsequently designated as
25 EXPORT-CONTROL-RESTRICTED by a party to the Action shall be treated as
26 EXPORT-CONTROL-RESTRICTED information, and the recipients shall either
27 mark their copies as “EXPORT-CONTROL-RESTRICTED” or request that the
28 Producing Party provide a replacement set so marked.

1 15. Designating Deposition Testimony. In the event that any question is
2 asked at a deposition that involves or calls for the disclosure of Protected Material,
3 the witness shall nevertheless answer such question unless he or she has an
4 independent basis for not responding, provided that the only persons in attendance
5 at the deposition are persons who are permitted to receive the Protected Material.
6 Testimony given at a deposition may be designated as Protected Material by
7 making a statement to that effect on the record. Alternatively, within thirty (30)
8 business days after receipt of a final transcript, the parties also may designate such
9 transcript or any portion thereof by notifying all parties, in writing, of the specific
10 pages and lines of the transcript which should be treated as Protected Material. All
11 deposition transcripts shall be treated as Protected Material until thirty (30)
12 business days after receipt thereof by counsel for the parties and counsel for the
13 witness. The reporter for any deposition shall mark with the legend
14 “CONFIDENTIAL” and/or “EXPORT-CONTROL-RESTRICTED,” as applicable,
15 pages that contain testimony designated as Protected Material during the
16 deposition.

17 16. Inadvertent Failure to Designate as Protected Material. Inadvertent
18 failure to designate any material or information as Protected Material pursuant to
19 this Protective Order shall not constitute a waiver of any otherwise valid claim for
20 protection and may be remedied by supplemental written notice. If such notice is
21 given, all information so designated shall be fully subject to this Protective Order as
22 if it had been initially designated as Protected Material. After any designation is
23 made in accordance with this paragraph, arrangements shall be made for the return
24 to the Producing Party of all copies of the inadvertently undesignated documents
25 and for the substitution, where appropriate, of properly labeled copies. An
26 inadvertent failure to designate does not relieve a recipient of obligations under
27 ITAR and EAR. Furthermore, ITAR and EAR contain additional provisions
28 relating to the disclosure of any actual or suspected infractions regarding

1 “EXPORT-CONTROL- RESTRICTED” documents and things.¹ Any party aware
 2 of actual or suspected violations of ITAR and/or EAR will immediately inform, and
 3 await further instructions from, the Producing Party.

4 **ACCESS AND USE OF PROTECTED MATERIAL**

5 17. All information or documents disclosed in this Action, whether or not
 6 containing Protected Material, shall be used solely for purposes of this Action and
 7 not in connection with any other litigation or judicial or regulatory proceeding or
 8 for any business, commercial, competitive, personal or other purpose.

9 18. Protected Material shall be maintained in confidence pursuant to this
 10 Protective Order and any applicable statutes or regulations, and shall be disclosed
 11 only to the following persons:

- 12 a. Counsel and in-house counsel for the parties, as well as their
 13 paralegal, investigative, technical, secretarial, and clerical
 14 personnel who are engaged in assisting them in the Action;
- 15 b. Officers and employees of the named parties, but only insofar as
 16 reasonably necessary for the prosecution and defense of the
 17 Action;
- 18 c. Non-party experts or consultants retained in good faith to assist
 19 the parties in connection with the Action, provided that prior to
 20 the time that any such expert or consultant is given access to
 21 Protected Material, such person is provided with a copy of this
 22 Protective Order, such expert or consultant shall execute an
 23 undertaking in the form of Exhibit A hereto agreeing to be
 24 bound by this Protective Order, which undertaking shall be
 25 retained by counsel for the party who engaged such expert or
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¹ See, e.g., ITAR, 22 C.F.R. § 127.12; EAR, 15 C.F.R. §§ 730-44.

1 consultant, and, to the extent applicable, such person is
2 permitted access consistent with ITAR and EAR;

3 d. Any witness or potential witness and counsel for that witness or
4 potential witness. If the witness or potential witness is neither
5 currently employed by the Producing Party nor an expert
6 witness covered by subparagraph c above, the Protected
7 Material may be disclosed to the witness or potential witness
8 only if the Protected Material is relevant to the Action and to the
9 person's knowledge and potential testimony, and provided that,
10 prior to the time that any such witness or potential witness is
11 given access to Protected Material, such person is provided with
12 a copy of this Protective Order and (i) such person executes an
13 undertaking in the form of Exhibit A hereto agreeing to be
14 bound by this Stipulated Protective Order or, if the witness or
15 potential witness refuses to execute the undertaking,
16 (ii) counsel giving access to Protected Material advises the
17 witness or potential witness of the provisions of this Protective
18 Order and prevents such witness or potential witness from
19 retaining possession of any Protected Material, and (iii) to the
20 extent applicable, such person is permitted access consistent
21 with ITAR and EAR;

22 e. Court reporters, stenographers or video operators at depositions,
23 court or arbitral proceedings at which Protected Material is
24 disclosed, provided that, to the extent applicable, any such
25 person is permitted access consistent with ITAR and EAR;

26 f. Any persons requested by counsel to furnish services such as a
27 mock trial or jury profiling; translation or court reporting
28 services; demonstrative exhibit preparation; the creation of any

1 computer database from documents; or the production,
 2 reproduction, organizing, filing, coding, cataloging, converting,
 3 storing, retrieving and review of Protected Material, to the
 4 extent reasonably necessary to assist the parties in connection
 5 with the Action, provided that, to the extent applicable, any such
 6 person is permitted access consistent with ITAR and EAR; and

7 g. Any other person designated by the Court, upon such terms as
 8 the Court may deem proper, or agreed to by written stipulation
 9 of the parties; and

10 h. The Court and its personnel.

11 19. Counsel is responsible for ensuring that those persons identified in
 12 subsections (c), (f) and (g) of this section are aware of the terms and conditions of
 13 this Protective Order, and for complying with ITAR and EAR, including by
 14 obtaining a signed Confidentiality Agreement in the form attached as Exhibit A.

15 20. If any person wishes to submit any Protected Material to the Court, the
 16 person shall, unless directed by the Court to do otherwise, comply with Local Rule
 17 79-5, including any procedures adopted under the Pilot Project for the Electronic
 18 Submission and Filing of Under Seal Documents. **Good cause must be shown to**
 19 **file any material under seal.** If a person's request to maintain a submission
 20 containing Protected Material under seal is denied as to one or more submissions,
 21 and the person does not seek reconsideration under the applicable Local Rules or
 22 otherwise appeal the denial, then those submissions may be placed in the public
 23 record.

24 21. If Protected Material is disclosed to or comes into the possession of
 25 any person other than in a manner authorized in this Protective Order, the party
 26 responsible for the disclosure shall immediately (1) inform those persons of this
 27 Protective Order; and (2) inform the person who designated the material as
 28 Protected Material and the other parties already subject to this Protective Order that

1 are in possession of such Protected Material of all pertinent facts relating to such
 2 disclosure and shall make reasonable efforts to prevent further disclosure by each
 3 unauthorized person who received Protected Material.

4 **CHALLENGING DESIGNATION**

5 22. If the Receiving Party disagrees with the designation by the Producing
 6 Party, then the parties shall comply with Local Rule 37 in resolving the dispute.
 7 Pending a determination by the Court, such information shall be treated by all
 8 parties as Protected Material in accordance with this Protective Order. The
 9 Receiving Party shall bear the burden and expense of establishing the impropriety
 10 of the challenged designation.

11 **ADDITIONAL PROVISIONS**

12 23. Nothing in this Protective Order shall prejudice the right of any party
 13 to object to the production of any discovery material on the grounds permitted by
 14 the Federal Rules of Civil Procedure, including that the material is protected as
 15 attorney-client privileged or attorney work product.

16 24. Nothing in this Protective Order shall prejudice the right of any party
 17 to object to the production of any discovery material on the grounds that it is
 18 protected from disclosure by this Court's Order Granting Defendant's Motion for
 19 Protective Order [Dkt. #18], entered by the Honorable Paul L. Abrams on July 7,
 20 2016.

21 25. Nothing in this Protective Order, nor the production of any documents
 22 or disclosure of any information pursuant to this Protective Order, shall be deemed
 23 to have the effect of (i) an admission or waiver, including waiver under the rules of
 24 evidence, by any party or other subscriber to this Protective Order; (ii) altering the
 25 confidentiality or nonconfidentiality of any such information; or (iii) altering any
 26 existing obligation of any party or other subscriber, or the absence of such
 27 obligation.

28 26. Nothing in this Protective Order shall limit a Producing Party's use of

1 its own Protected Material. Such disclosures shall not affect any designation of
2 such documents as Protected Material.

3 27. Within sixty (60) days after final termination of this Action, including
4 all appeals, all parties and experts, consultants and witnesses shall (i) return to the
5 Producing Party or, with the Producing Party's written permission, destroy all
6 originals of material produced and designated as Protected Material and all identical
7 copies, whether in whole or in part, of such documents, and (ii) destroy all copies
8 thereof, as well as all notes, memoranda or other documents that summarize,
9 discuss or quote materials produced and designated as Protected Material, except
10 that, with respect to word processing and database tapes and disks, they shall
11 destroy or erase such tapes or disks to the extent practicable. Outside counsel for
12 each party shall be entitled to retain copies of any deposition transcripts and
13 exhibits and any pleadings, motions, memoranda, or exhibits that have been filed
14 with the Court or admitted into evidence and that contain or refer to information
15 designated as Protected Material, provided that all such documents shall remain
16 subject to this Protective Order. Counsel of record for the parties shall certify in
17 writing to each Producing Party that the foregoing has been complied with.

18 28. This Protective Order will be enforced under applicable law. All other
19 remedies available to any person injured by a violation of this Protective Order are
20 fully reserved.

21 29. The Court retains jurisdiction to amend or modify this Protective
22 Order upon stipulation of the parties to this Action, motion by a party or non-party,
23 or on its own motion. Nothing in this Protective Order abridges the right of any
24 person to seek its modification by the Court in the future.

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2 30. This Protective Order shall survive and remain in full force and effect
3 after termination of this Action.

4 IT IS SO STIPULATED.

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6 Dated: October 28, 2016

MANATT, PHELPS & PHILLIPS, LLP
Robert H. Platt
Esra Acikalin Hudson
Eve L. Torres

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10 By: /s/: Esra Acikalin Hudson*

Esra Acikalin Hudson
Attorneys for Defendant
RAYTHEON COMPANY

11
12
13 Dated: October 28, 2016

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GEORGE
Victor L. George
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15
16 By: /s/: Wayne C. Smith

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Attorneys for Plaintiff
IMELDA ORTIZ

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28 * Filer attests that all signatories listed, and on whose behalf the filing is submitted, concur in the
filing's content and have authorized the filing.

ORDER

For good cause shown, the Court GRANTS the parties' Stipulated Protective Order.

IT IS SO ORDERED.

Dated:

10/31/16_____



The Honorable Paul L. Abrams
United States Magistrate Judge

EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IMELDA ORTIZ, an individual,
Plaintiff,

vs.

RAYTHEON COMPANY, Space and
Airborne Systems, a business, form
unknown; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 2:16-cv-00900-ODW-PLA

**AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER**

1 I, _____, declare that:

2 1. I am (check one) [] a party to this action, or [] employed as _____
 3 _____ by _____
 4 _____.

5 2. I have read and understand the Protective Order that has been entered
 6 in *Imelda Ortiz v. Raytheon Company*, Case No. 2:16-cv-00900-ODW-PLA.

7 3. I will comply with all of the provisions of the Protective Order. I will
 8 hold in confidence, will not disclose to anyone not qualified under the Protective
 9 Order, and will use only for purposes of this action any information disclosed to me
 10 that has been designated as “Protected Material” under the terms of the Protective
 11 Order.

12 4. Promptly upon termination of this action, at the latest, I will return all
 13 documents and things designated as Protected Material that came into my
 14 possession, and all documents and things that I have prepared relating thereto, to
 15 the party from which I received it.

16 5. I hereby submit to the jurisdiction of this Court for the purpose of
 17 enforcement of the Protective Order in this action.

18 6. I understand that any disclosure or use of “Confidential” information
 19 in any manner contrary to the provisions of the Protective Order may subject me to
 20 sanctions for contempt of court.

21 7. I understand that the Arms Export Control Act, ITAR, and EAR also
 22 impose criminal and civil penalties for violations of their provisions, such as the
 23 unlicensed export, disclosure, or transfer of technical data to a foreign person.

24 I declare under penalty of perjury under the laws of the United States of
 25 America that the foregoing is true and correct.

26 Dated: _____

27 _____

28 (SIGN NAME)

(PRINT NAME)